

HOUSE BILL REPORT

HB 3185

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to violations of wage payment requirements.

Brief Description: Concerning violations of wage payment requirements.

Sponsors: Representative McCoy.

Brief History:

Committee Activity:

Commerce & Labor: 1/30/06, 2/1/06 [DPS].

Brief Summary of Substitute Bill

- For violations of wage payment requirements, authorizes the Department of Labor and Industries (Department) to order the payment of wages owed, including interest and, for willful violations of wage payment requirements, civil penalties.
- Provides for immunity from and waivers of civil penalties for employers in specified circumstances.
- Provides for an election of remedies by the employee.
- Establishes procedures for administrative review of citations and notices of assessment, and for collection of unpaid wages, interest, and civil penalties.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Holmquist, Hudgins, Kenney and McCoy.

Staff: Jill Reinmuth (786-7134).

Background:

The state Minimum Wage Act and other laws establish standards for the payment of wages. These standards are enforced by the Department of Labor and Industries (Department), which has authority to investigate wage violations, order the payment of wages owed to workers, and

bring civil actions to collect wages. Employees are also permitted to bring civil actions to collect unpaid wages. Criminal penalties apply to certain violations.

An employer who pays an employee less than the amount to which the employee is entitled is liable in a civil action to the employee, even if the employee agreed to work for less. If the employee is successful in obtaining a judgment for wages owed, attorneys' fees are assessed against the employer, unless the recovery is equal to or less than the amount the employer admitted to be owing.

An employer is also liable in a civil action to the employee or employee's assignee for collecting a rebate from employees' wages and for paying a lower wage than obligated by law or contract when the paying of lower wages is willful and is done with intent to deprive. In this case, the employer is subject to exemplary damages of twice the amount of wages withheld.

The Department may investigate wage violations, order employers to pay, and institute actions to collect after a determination that sums are owed. The Department also may take assignments of wage claims and prosecute actions for employees who are financially unable to employ counsel.

A three-year statute of limitation applies to a number of causes, including an action on an unwritten contract (six years for written contract). The statute of limitations is two years for any action with no other limit specified.

Summary of Substitute Bill:

If an employee files a wage complaint, the Department of Labor and Industries (Department) must investigate the complaint. A "wage complaint" is a complaint from an employee to the Department that an employer has violated one or more wage payment requirements. A "wage payment requirement" includes the requirements to pay minimum wages, overtime compensation, and final wages, and the requirement to withhold only lawful deductions from wages.

The Department must issue either a citation and notice of assessment (citation) or a determination of compliance (determination) no later than 60 days after receiving the complaint and within three years after the date when the wages were due.

The Department may order the employer to pay employees all wages owed, including interest of 1 percent per month. If the violation is willful, the Department may also order the employer to pay a civil penalty.

Civil penalties for willful violations of wage payment requirements must be the greater of \$500 or 10 percent of unpaid wages, but not more than \$20,000. Civil penalties must be deposited in the Supplemental Pension Fund.

The Department may not assess civil penalties if the employer reasonably relied on a rule or an interpretive or administrative policy. In addition, an employer is immune from civil penalties if the employer reasonably relied on a written order, ruling, approval, opinion, advice, determination or interpretation of the director of the Department. Records of such written orders, rulings, approvals, opinions, advice, determinations, and interpretations must be maintained by the Department.

The Department must waive civil penalties if the employer paid the wages owed, including interest, within 10 business days of receiving the citation. The Department may waive civil penalties if the employer paid the wages owed.

An employee who has accepted payment of the wages owed, including interest, is barred from initiating or pursuing other actions based on such requirements.

An employee who has filed a wage complaint may elect to terminate the Department's administrative action, and preserve a private right of action by providing written notice to the Department within 10 business days of the Department's issuance of a citation. If the employee elects to terminate the Department's administrative action, the Department must discontinue its action against the employer and vacate a citation already issued. The citation, related findings of fact or conclusions of law, and payments or offers of payment are not admissible in other proceedings. The election of remedy provision does not limit another employee's right to pursue an action or the Department's right to pursue an action identified as a result of a wage complaint or in the absence of a wage complaint.

Procedures are established for administrative review of citations, as well as collection of unpaid wages and civil penalties.

Substitute Bill Compared to Original Bill:

The Department is required to investigate a complaint and issue either a citation and notice of assessment (citation) or a determination of compliance (determination) no later than 60 days after receiving a wage complaint. A person aggrieved by either a citation or a determination (instead of only those aggrieved by a citation) may appeal. The Department is required to maintain records of written orders in accordance with its obligations under the law governing preservation and destruction of public records. Various time periods are changed from five to 10 business days. Provisions are added which specify that the fact of payment bars the employee from pursuing other actions, and that, if the employee elects to terminate the Department's administrative action, the citation is not admissible in other proceedings. Definitions are added for "determination of compliance" and "wage complaint."

Appropriation: None.

Fiscal Note: Available on HB 3185. Requested on substitute bill January 26, 2006.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The stakeholders have met a number of times. We have literally spent hundreds of hours over the past year working on getting a bill that is fair, efficient, and non-punitive. The bill is not yet perfected, but we are working on it. We are getting very close.

The bill takes us back to the Supreme Court's decision in *Drinkwitz* in 2000. Employers could no longer rely on federal law where state law was silent. Then we worked through developing the salary basis rules and forming the Employment Law Advisory Committee. Now we have the bill to give the Department of Labor and Industries administrative authority to go after bad actors while safeguarding good ones. We're headed in the right direction and are cautiously optimistic.

The criteria for judging the bill are: (1) consistency with existing law; (2) clear and understandable requirements; (3) certainty and finality; and (4) reasonable and balanced enforcement. The bill addresses all of these factors, and strikes a balance between employer and employee interests.

We are waiting to see what comes out of the next meeting. This issue area is difficult and scary because of the potential for penalties. The narrow scope is key. The protections, including safe harbors, also help. It is important that the process is one that is easily understood.

Testimony Against: None.

Persons Testifying: (In support) Representative McCoy, prime sponsor; and Patrick Woods, Department of Labor and Industries.

(In support with concerns) Bruce Neas, Columbia Legal Services.

(In progress) Kris Tefft, Association of Washington Business; and Doug Smith, Lane Powell PC and Association of Washington Business.

(With concerns) Carolyn Logue, National Federation of Independent Business.

Persons Signed In To Testify But Not Testifying: None.